

The Ensuring Patient Access to Healthcare Records Act

Allowing clearinghouses to effectively contribute to a 21st Century healthcare system.

BACKGROUND:

An estimated 90% of the healthcare claims transactions in the United States through one of several major clearinghouses, which serve as financial brokers between providers and insurers. Clearinghouses convert provider information into claims-processing compatible electronic formats. Then, they submit the claims to the insurers for payment and finally send providers the payments. Claims data could be analyzed by clearinghouses both longitudinally and geographically, providing powerful analytical tools that could benefit the overall healthcare system and facilitate medical innovation in the 21st Century.

Under the Health Insurance Portability and Accountability Act (HIPAA), which was implemented through regulations known as the Privacy Rule, HIPAA applies to “covered entities”, which are providers, plans, and clearinghouses. However, the Privacy Rule also defines clearinghouse as “business associates” which are subject to written agreements that handcuff the interchange of data. This dual role as both a “covered entity” and a “business associate” creates confusion about the scope of a clearinghouse’s legal authority to process health information.

LEGISLATION:

The Ensuring Patient Access to Healthcare Records Act would clarify that regardless of whether a clearinghouse originally collected Protected Health Information (PHI) in its role as a business associate, the clearinghouse is permitted to use and disclose PHI in the same manner as other covered entities under the Privacy Rule. These uses and disclosures include: research purposes, public health purposes, and releasing the individual’s own PHI to said individual.

Additionally, the legislation would permit a clearinghouse to analyze, prepare, and distribute reports with the goals of improving healthcare; lowering healthcare costs; identifying and addressing market inefficiencies; facilitating public health monitoring, and otherwise improving the healthcare system.

Importantly, an unauthorized use or disclosure of a patient’s health information ***would still remain subject to civil and criminal penalties under HIPAA.***

HOW THIS HELPS:

- Provides a patient with their own health records.
- Creates de-identified data sets.
- Shows a provider which methodologies for providing care are associated with the best outcomes.
- Outlines a pharmaceutical company’s market potential by examining the population of patients who may be helped by a new treatment.
- Identifies potential patients who may be eligible for enrollment in a clinical trial.
- Allows physicians to better understand referral patterns within their practices.
- Assists patients in locating physicians and hospitals that provide the most effective and cost efficient care.
- Helps public health authorities (FDA, CDC, OSHA, State health departments, etc.) already authorized by law to collect or receive such information to prevent or control disease, injury, or disability.
- Identifies individuals at risk of contracting or spreading a disease.
- Gives healthcare manufacturers valuable information related to the quality, safety, or effectiveness of a product or activity regulated by the FDA, such as collecting or reporting adverse events and enabling product recalls.